

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MOSAIC POTASH CARLSBAD, INC.,

Plaintiff,

vs.

Case No. 2:16-cv-00808-KG-SMV

INTREPID POTASH, INC., INTREPID
POTASH-NEW MEXICO, LLC, AND
STEVE GAMBLE,

Defendants.

STIPULATION REGARDING DISCOVERY, AMENDMENT OF PLEADINGS, AND
INITIAL SCHEDULING ORDER, AND REQUEST FOR APPROVAL THEREOF

WHEREAS, on February 13, 2015, Plaintiff filed a Complaint against Defendants in the Fifth Judicial District Court, County of Eddy, State of New Mexico, Cause No. D-503-CV-2015-00176, (“the State Court Action”) which was subsequently amended;

WHEREAS, certain claims and counterclaims remain pending in the State Court Action;

WHEREAS, Plaintiff filed a Complaint in this action on July 11, 2016, asserting three counts: violation of the Computer Fraud and Abuse Act, conversion, and conspiracy;

WHEREAS, Defendants Intrepid Potash, Inc. and Intrepid Potash New Mexico, LLC, filed a motion to dismiss or stay this action, which was denied on October 26, 2017;

WHEREAS, the parties wish to efficiently and expeditiously resolve all claims among them in a single forum.

THEREFORE, the parties hereto, through the undersigned, for the purposes of economy and efficiency for both the Court and the parties, hereby stipulate as follows:

1. The parties agree that all documents, things, interrogatory answers, responses to requests for admission, sworn testimony, and other information produced in the State Court Action, shall be deemed to have been produced in this case, subject to any protective order entered in this action.

2. The parties shall cooperate to request that a protective order be entered in this action that is substantially similar to the protective order in effect in the State Action, and the parties agree that any designation of a document, interrogatory answer, deposition transcript, or other discovery response as “Confidential” or “Attorney’s Eyes Only” in the State Court Action shall also apply in this action.

3. The parties agree that this Stipulation shall not in any way limit the parties’ rights to object to the admissibility of documents, things, interrogatory answers, responses to requests for admission, sworn testimony, or other information on any ground in this case.

4. The parties agree that Plaintiff may amend its complaint in the State Court action to assert a claim under the Computer Fraud and Abuse Act, and any other claim asserted in this federal action, after which time Defendants agree that they will timely file a notice to remove the State Court Action to the U.S. District Court for the District of New Mexico pursuant to 28 U.S.C. § 1446(b)(3).

5. The parties agree that, assuming the amendment of the complaint and subsequent removal to federal court are successful, after the case has been removed, they will file a joint motion to consolidate the removed action with this action, Case No. 2:16-cv-00808-KG-SMV. If the motion is denied, Plaintiff will dismiss one federal action without prejudice so that duplicative claims are not pending. If removal to the federal court is denied, and the case is remanded, Plaintiff will likewise dismiss the newly added Computer Fraud and Abuse Act claim

and other claims asserted in this federal action from the state court action so that duplicative claims are not pending.

6. The parties agree that all discovery, whether served before or after removal, shall be subject to the Federal Rules of Civil Procedure.

7. The parties request that the meet and confer and disclosure obligations be delayed thirty days to avoid piecemeal litigation and promote orderly discovery. The parties will act promptly to avoid any delay.

Dated: December 15, 2017

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/s/ Forrest Tahdooahnippah

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Dated: December 15, 2017.

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Dated: December 15, 2017

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PURSUANT TO STIPULATION, IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE